

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 20, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 313, HB 165, HB 254, HB
547, 3/15/2001
Executive Action: None

HEARING ON HB 313

Sponsor: REP. GAY ANN MASOLO, HD 40, TOWNSEND

Proponents: Judy Wang, Assistant City Attorney, Missoula
Cindy Weese, Executive Director, MT. Coalition
Against Domestic & Sexual Violence
Mikie Baker-Hajek, Homicide Survivor

Mary McCue, MT. Clinical Mental Health Counselors
Association
Sue Weingartner, MT. Psychology Association
Tootie Welker, Director Sanders County Coalition
for Families
Pam Bucy, Assistant Attorney General
Colleen Murphy, Executive Director, National
Assoc. of Social Workers

Opponents: Bruce Spencer, Attorney Board of Social Worker
Examiners
Robert Throssell, MT. Magistrates Association

Opening Statement by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND, said this bill had been amended in the House and dealt with the investigative criminal justice report. She pointed out sections of the bill and mentioned the protection of a partner or family member, who may file a petition for an order of protection against the offender. She felt this bill would assist Montana with domestic law and domestic situations.

Proponents' Testimony:

Judy Wang, Assistant City Attorney, Missoula, handed in her testimony and letters of support **EXHIBIT(jus63a01)**.

Cindy Weese, Executive Director, MT. Coalition Against Domestic & Sexual Violence, handed in her testimony **EXHIBIT(jus63a02)**.

Mikie Baker-Hajek, Homicide Survivor, handed in her testimony **EXHIBIT(jus63a03)**.

May McCue, Montana Clinical Mental Health Counselors, handed in a copy of amendments and language explained within the bill **EXHIBIT(jus63a04)**. She talked about the amendments and references of the changes in language. She explained what was removed from the bill.

Sue Weingartner, MT. Psychology Association, handed in a testimony **EXHIBIT(jus63a05)**.

Tootie Welker, Director Sanders County Coalition for Families, handed in her testimony and letters of support **EXHIBIT(jus63a06)**.

Pam Bucy, Assistant Attorney General, mentioned the changes within the bill and the increasing need for counseling for domestic violence.

Colleen Murphy, Executive Director, National Association of Social Workers, explained the concern of the language on page ten of the bill pertaining to child hearsay. She said minors should not be placed in the middle of a domestic abuse.

{Tape 1; Side B}

Opponents' Testimony:

Bruce Spencer, Attorney Board of Social Worker Examiners, handed in his testimony **EXHIBIT(jus63a07)**.

Robert Throssell, MT. Magistrates Association, mentioned two concerns, the first being from page two under the transmitting of the criminal report. He thought that to be unclear as to how the report gets to the counselors. The other concerns of the magistrates deals with the number of hours being changed. He said it becomes difficult to enforce extra workload hours.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN referred to Dawson County and domestic violence issues. He asked if adding hours wouldn't that become costly by adding more personal resources. **Judy Wang** said they have asked for lower funds and added hours would assist with the changes in behavior of the criminal.

SEN. HOLDEN asked how can this help the program by adding more hours and resources. **Judy Wang** said the current law reads 40 hours for offenders to complete in a year and 25 hours won't let them go any farther to achieve a change in the behavior.

SEN. JERRY O'NEIL asked about the cost of the current 25 hours. **Judy Wang** answered it was \$400 for 25 hours.

SEN. O'NEIL asked if 40 hours would be proportional. **Judy Wang** said there is an assessment and the cost of the assessment should not increase.

SEN. O'NEIL asked if offender intervention programs are already set up in the state. **Judy Wang** said there are programs in parts of the state.

SEN. O'NEIL asked if the programs would be set up all over the state. **Judy Wang** said it is a goal of the coalition to work with domestic and violence shelters around the state.

SEN. O'NEIL asked if this was a public program or a program with private counselors. **Judy Wang** said it is a private program.

SEN. O'NEIL asked if any group of counselors could set up their own intervention program. **Judy Wang** answered yes, they could.

SEN. O'NEIL asked which the court would use. **Judy Wang** said that is up to the court in those areas.

SEN. O'NEIL asked if the intervention program notifies the court dealing with actions. **Judy Wang** said there is a communication set up in the bill.

SEN. O'NEIL asked if this program has a group of counselors or are they separate. **Judy Wang** answered it could be a group or a private counselors and it would depend upon each area.

SEN. O'NEIL asked about establishing intervention programs. **Judy Wang** said generally the programs are already in existence.

SEN. O'NEIL asked if this bill would require every county to have an offender intervention program. **Judy Wang** said it depends upon the court referral.

SEN. O'NEIL didn't feel this bill would work without an offender intervention program in existence. He asked how would this work with counties that are not set up for these programs. **Judy Wang** said this is a problem that already exists.

SEN. STEVE DOHERTY pointed to Section four and asked if the counselor offered confidentiality. **Judy Wang** said the preferred method is group counseling.

{Tape 2; Side A}

SEN. MIKE HALLIGAN asked if the duty to warn was consistent. **Judy Wang** said they were consistent, but need to be inclusive.

SEN. HALLIGAN asked why there is a need for assessment. **Judy Wang** said in many cases the assessment is needed.

SEN. HALLIGAN asked the cost of a doctor per hour. **Judy Wang** explained in Missoula the cost ranges from \$15 to \$20 an hour for

group counseling. **Colleen Murphy** said for private counseling the cost is anywhere from \$60 to \$90.

SEN. HALLIGAN asked what was the average length of time of counseling needed to be completed. **Tootie Welker** said the offender could finish within eight months and that would be one to two hours weekly.

SEN. O'NEIL asked how the counseling was being provided now. **Tootie Welker** answered yes, counseling is now being provided.

SEN. O'NEIL asked how many hours are required on the program. **Tootie Welker** answered the minimum was 25 hours.

SEN. O'NEIL asked if 25 hours was effective. **Tootie Welker** said the program is effective now with the 25 hours.

SEN. O'NEIL asked if 40 hour programs were more effective. **Tootie Welker** said there is no clear convincing evidence on hours used.

Closing by Sponsor:

REP. GAY ANN MASOLO, HD 40, TOWNSEND, explained the background as a teacher and how children were involved in domestic abuse. She summarized the bill and the extension of hours from 25 to 40 to assist with treatment of the offender.

HEARING ON HB 165

Sponsor: **REP. GAIL GUTSCHE, HD 66, MISSOULA**

Proponents: **REP. CAROL JUNEAU, HD 85, BROWNING**
Mike Foster, Governor's Office
REP. NORMA BIXBY, HD 5, LAME DEER
Karl Fourstar, State Burial Board
REP. DAN MCGEE, HD 21, LAUREL
REP. JOEY JAYNE, HD 73, ARLEE
REP. FRANK SMITH, HD 98, POPLAR
Sharon Hoff-Brodowy, MT. Catholic Conference
Germaine White, Salish & Kootenai Tribes
Claire Sharlo, Representing Family
Antoine Incashola, Director Flathead Reservation
George Ochenski, Salish & Kootenai Tribes
Shaun Whitewolf, Northern Cheyenne Tribes

Opponents: None

Opening Statement by Sponsor:

REP. GAIL GUTSCHE, HD 66, MISSOULA, said this bill would allow the act of protection from disturbing grave-sites. She addressed concerns dealing with scientific, Indian tribes and with museum communities. She said this bill provides a mechanism of returning anything taken from grave-sites specific to burial sites and burial goods. She expressed the rights of ancestors and the remains from the lands where they were buried.

Proponents' Testimony:

REP. CAROL JUNEAU, HD 85, BROWNING, said she worked on this issue from the Law, Justice and Indian Affairs Interim Committee. She shared comments from the Governor's State of the Address. She urged a do pass and support of this bill.

Mike Foster, Governor's Office, said there is strong support of this bill from the Governor. He explained the safeguards within the bill and felt there needs to be respect of burial remains.

REP. NORMA BIXBY, HD 5, LAME DEER, handed in a testimony
EXHIBIT (jus63a08).

Karl Fourstar, State Burial Board, talked about the concerns from tribes. She encouraged support for this bill. He pointed to page two of the bill and explained the need to respect burial remains.

{Tape 2; Side B}

REP. DAN MCGEE, HD 21, LAUREL, added support of this bill and the need to respect burial remains.

REP. JOEY JAYNE, HD 73, ARLEE, said this bill involves everyone's ancestors. She asked for support of the bill.

REP. FRANK SMITH, HD 98, POPLAR, expressed the burial of tribal members is very sacred. He urged support of this bill.

Sharon Hoff-Brodowy, Catholic Conference, explained the spiritual dimension dealing with this bill. She said there needs to be respect of ancestors. She talked about how criminals wreck headstones and demolish burial lands and this bill would help protect against these criminal acts.

Germaine White, Salish & Kootenai Tribes, handed in a testimony **EXHIBIT(jus63a09)**.

Claire Sharlo, Representing Family, addressed issues of burial lands. She talked about her Salish culture and the need to know generations and where they come from. She said this bill would protect the remains of her ancestors and offer respect and dignity to their burial sites.

Antoine Incashola, Director Flathead Reservation, mentioned the different cultures and the value system of respecting burial remains.

{Tape 3; Side A}

George Ochenski, Salish & Kootenai Tribes, asked for support of this bill. He expressed the need to respect burial remains and ancestors.

Shaun Whitewolf, Northern Cheyenne Tribes, expressed the need of respect for burial ancestors. He pointed out the honor and dignity for burial lands and remains. He asked for support of this bill for protection of his ancestors and other's cultural heritage.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HALLIGAN asked about the multiple claims issue and if the tribal court would be involved. **Germaine White** explained tribes making claims.

SEN. HALLIGAN referred to the appropriate care of remains until the requesting parties agree or dispute and the issue is resolved in a court of competent jurisdiction. He asked about including a tribal court with multiple claims. **John Carter, Attorney, Salish & Kootenai Tribes**, explained the provisions in the bill dealing with a dispute. **Sara Bond, Attorney General's Office**, said the board can hold remains for protection until the matter is resolved.

CHAIRMAN GROSFIELD asked why private individuals are not a part of a delay for scientific study. **Sara Bond** said the section addresses the hearings examiner to order tests to establish evidence and those test could be conducted by a party.

CHAIRMAN GROSFIELD asked how this bill would affect museums and their exhibits. **Arnie Olson, Director, MT. Historical Society**, explained the impact this bill would have on museums.

CHAIRMAN GROSFIELD asked about a particular collection and if it would be subjected to the terms of this bill. **Arnie Olson** said yes, it would have the potential to do so.

SEN. AL BISHOP asked if this bill would not allow a private person to keep remains wherever found. **Germaine White** said this bill provides the opportunity to repatriate depending upon the individual family or cultural desire.

SEN. BISHOP asked if these tribes or groups are not necessarily Indian. **Germaine White** answered yes. She said this bill recognizes all cultures and backgrounds.

SEN. BISHOP asked about the custodian of burial remains. **Sara Bond** explained the section of the bill, which is an open question dealing with the burden of proof with the claimant.

SEN. HOLDEN referred to a situation of Spanish settlers in Eastern Montana. He asked how this bill would be affected if those type of burial sites were touched. **Sara Bond** answered the proper course of action in these type of cases is already protected by the Burial Site Protection Act.

{Tape 3; Side B}

Closing by Sponsor:

REP. GAIL GUTSCHE, HD 66, MISSOULA, summarized the bill and how it builds upon the current act. She explained this bill would provide a loophole from legislation in 1991. She urged support of this bill and expressed the need to respect burial sites.

HEARING ON HB 254

Sponsor: **REP. BOB DAVIES, HD 27, BOZEMAN**

Proponents: **Bob Pyfer, Executive Vice President, MT. Association of Credit Unions**
Steve Whiting, MT. Collectors Association
Wayde Cooperider, MT. Sheriffs and Peace Officers Association

Opponents: **None**

Opening Statement by Sponsor:

REP. BOB DAVIES, HD 27, BOZEMAN, explained this bill offers the right of execution from garnishment of wages. He talked about how pay periods can be missed and the filing made increases the cost. He said this bill allows for an on-going execution for 120 days, offering the opportunity to save both the creditor and the debtor money.

Proponents' Testimony:

Bob Pyfer, Executive Vice President, MT. Association of Credit Unions, felt this bill would assist in the garnishment of wages. He stated this situation would be a win-win for creditors and debtors. He explained incidences of charges and the amounts incurred. He said this saves the debtor levy charges and improves the collection process.

Steve Whiting, MT. Collectors Association, talked about proposing an amendment for page two. He explained the concerns dealing with the one time procedure.

Wayde Cooperider, MT. Sheriffs and Peace Officers Association, explained the benefit of the 120 day extension. He felt this bill would assist creditors and debtors. He urged support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked for clarification of the length of time for withholding. **Wayde Cooperider** explained the current law and how executions are served. He said the intent of this bill is to do it one-time.

SEN. GRIMES asked what would happen if an employer fails to withhold due to the change over. **Wayde Cooperider** said an employer would give some leniency and reserve. He said there are legal remedies the creditor could pursue.

SEN. O'NEIL asked if there is any duty of collecting judgement so the creditor doesn't collect twice. **Wayde Cooperider** said yes, if the money is collected through another avenue then the levying officer would contact the employer and cancel the wage garnishment.

SEN. O'NEIL asked if that was included in this bill. **Wayde Cooperider** answered no, it is a common practice already done.

Closing by Sponsor:

REP. BOB DAVIES, HD 27, BOZEMAN, explained the proposed amendment of reinstating the notification and deleting sections of the bill. He summarized the bill and how it would assist creditors and debtors. He urged support of this bill.

HEARING ON HB 547

Sponsor: REP. BOB DAVIES, HD 27, BOZEMAN

Proponents: Steven Ertelt, Executive Director, Right to Life
 REP. JIM SHOCKLEY, HD 61, VICTOR
 Sharon Hoff-Brodowy, MT. Catholic Conference
 Julie Milliam, MT. Christian Coalition

Opponents: REP. BRAD NEWMAN, HD 38, BUTTE
 Sam Furcell, Chief Public Offender, Yellowstone
 County
 Pam Bucy, Assistant Attorney General
 Wayne Chamberlain, Executive Director, Blue
 Mountain Clinic
 Jacquelyn Lenmark, American Insurance Assoc.
 Stacey Anderson, Executive Director, NARAL

Opening Statement by Sponsor:

REP. BOB DAVIES, HD 27, BOZEMAN, said this bill provides for the protection dealing with a pregnant woman being assaulted and if injury is caused to the fetus. He explained exemptions for legal abortions and medical procedures needed. He said this bill provides respect and protects the choice of the woman to keep their baby. He handed out a possible amendment from the House with changes **EXHIBIT(jus63a10)**.

Proponents' Testimony:

Steven Ertelt, Executive Director, Right to Life, handed in a testimony **EXHIBIT(jus63a11)**.

{Tape 4; Side A}

REP. JIM SHOCKLEY, HD 61, VICTOR, felt this to be a good bill. He said this bill has a good concept and the amendments conform

to the language used in the state. He explained acts within the codes and what the provide pertaining to this bill.

Sharon Hoff-Brodowy, MT. Catholic Conference, explained an incident involving a pregnant woman. She pointed out this bill makes the killing of an unborn child a homicide.

Julie Milliam, MT. Christian Coalition, said this legislation would provide protection. She mentioned dealing with abused victims from crimes that involve injury to an unborn child. She asked for support of this bill.

Opponents' Testimony:

REP. BRAD NEWMAN, HD 38, BUTTE, said causation problems would be created from this bill for attorneys needing to prosecute under this statute. He said problems dealing with investigation and proof of these cases would come up. He felt expenses would be created due to the need of investigators.

Sam Furcell, Chief Public Defender, Yellowstone County, expressed concerns with problems this bill would create. He asked for a do not pass of this legislation.

Pam Bucy, Assistant Attorney General, said this bill transfers intent and the intent would not have to be to injure a pregnant woman. She said there would be huge causation problems for prosecutors in this bill and she urged the committee to take this into consideration.

Wayne Chamberlain, Executive Director, Blue Mountain Clinic, handed in a testimony **EXHIBIT(jus63a12)**.

Jacqueline Lenmark, American Insurance Association, said one of the coverages many of the companies write if for medical malpractice. She said this bill would create problems for health care practitioners, who may be implicated to an injury to a fetus. She didn't feel confident of this bill to protect medical practitioners. She pointed out language within the bill that needed clarification.

Stacey Anderson, Executive Director, NARAL, handed in her testimony **EXHIBIT(jus63a13)** and information from the internet **EXHIBIT(jus63a14)**.

Questions from Committee Members and Responses:

SEN. DOHERTY asked about the transferred intent. **Pam Bucy** explained transferred intent and how the defendant wouldn't be aware of the pregnancy.

SEN. DOHERTY asked how a separate offense could be charged with purposefully or knowingly of causing the death of the fetus. **Pam Bucy** said this bill does not clarify this intent. She said this is more of a causation problem.

SEN. DOHERTY asked if a pregnant woman was assaulted and attacked in Montana, would county attorneys fail to charge an additional count and would it be allowed under current law. **Pam Bucy** answered no, they would not fail to charge an additional count. She said this bill changes criminal law and definitions of human beings under the code.

SEN. DOHERTY asked if the amendments clarify the definition of a human being from the moment of conception. **Pam Bucy** said that was her understanding and it is contrary to federal law.

SEN. DOHERTY asked how the amendment could include another definition. **REP. DAVIES** said yes, a fetus is from the moment of conception.

SEN. HALLIGAN asked to look at the sentence enhancement issue and it would accomplish increasing penalties. **REP. DAVIES** said when a woman is pregnant the fetus is vulnerable. He felt concerned about the situation and statute mentions the fetus as a human being at the time of conception.

{Tape 4; Side B}

SEN. HALLIGAN asked why the House did not look at the sentence enhancement issue and eliminate the causation transferred intent. **REP. SHOCKLEY** answered how the problem dealt with the proof under doubt.

SEN. GRIMES asked how this bill conforms to the Wisconsin Law and he asked about the definition of legal abortion. **Steven Ertelt** said this bill doesn't deal with legal abortions and he explained spontaneous abortions, which is covered. He said the bill's intent is the protection of a pregnant woman by an attacker. He mentioned the same language used in the Wisconsin Law.

SEN. GRIMES asked if the ordinary care language was taken out of the codes. **Steven Ertelt** said this language was modeled from other states.

SEN. GRIMES asked the costs due to the medical experts required. **Steven Ertelt** felt the courts around Montana deal with costs due to litigation. He said experts related to the court case would add cost and there would not be an increase in litigation.

Closing by Sponsor:

REP. BOB DAVIES, HD 27, BOZEMAN, felt no problems should exist with this bill and prosecuting these types of cases under statute. He said this bill was for the purpose of treating the unborn fetus as a human being. He commented on the strengths of the bill and the protection of a pregnant woman, who had been attacked. He urged support of this bill and summarized the clarifications of the language.

ADJOURNMENT

Adjournment: 11:45 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus63aad)